

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF TEXAS AMARILLO DIVISION**

**ALLIANCE FOR HIPPOCRATIC MEDICINE,** )  
on behalf of itself, its member organizations, their )  
members, and these members' patients; )  
**AMERICAN ASSOCIATION OF PRO-LIFE** ) **Case No. 2:22-cv-00223-z**  
**OBSTETRICIANS AND GYNECOLOGISTS,** )  
on behalf of itself, its members, and their patients; )  
**AMERICAN COLLEGE OF PEDIATRICIANS,** )  
on behalf of itself, its members, and their patients; )  
**CHRISTIAN MEDICAL & DENTAL** )  
**ASSOCIATIONS,** on behalf of itself, its members )  
and their patients; **SHAUN JESTER, D.O.,** on )  
behalf of himself and his patients; **REGINA** )  
**FROST-CLARK, M.D.,** on behalf of herself and )  
her patients; **TYLER JOHNSON, D.O.,** on )  
behalf of himself and his patients; and **GEORGE** )  
**DELGADO, M.D.,** on behalf of himself and his )  
Patients,

Plaintiffs,

v.

**U.S. FOOD AND DRUG ADMINISTRATION;** )  
**ROBERT M. CALIFF, M.D.,** in his official )  
capacity as Commissioner of Food and Drugs, U.S. )  
Food and Drug Administration; **JANET** )  
**WOODCOCK, M.D.,** in her official capacity as )  
Principal Deputy Commissioner, U.S. Food and )  
Drug Administration; **PATRIZIA CAVAZZONI,** )  
**M.D.,** in her official capacity as Director, Center for )  
Drug Evaluation and Research, U.S. Food and Drug )  
Administration; **U.S. DEPARTMENT OF** )  
**HEALTH AND HUMAN SERVICES;** and )  
**XAVIER BECERRA,** in his official capacity as )  
Secretary, U.S. Department of Health and Human )  
Services,

Defendants.

**MOTION OF ADVANCING AMERICAN FREEDOM TO FILE A BRIEF AS  
AMICUS CURIAE IN SUPPORT OF PLAINTIFF'S COMPLAINT AND  
MOTION FOR TEMPORARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 7, movant, Advancing American Freedom (“AAF”) respectfully seeks this Court’s leave to file the accompanying brief as an amicus curiae in support of Plaintiff’s Complaint (Doc. 1) and Plaintiff’s Motion for Preliminary Injunction (Doc. 6). Consistent with Fed. R. App. P. 29(a)(4)(E), counsel for amicus authored its brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than amicus, its members, and its counsel – contributed monetarily to this brief’s preparation or submission.

**IDENTITY AND INTERESTS OF MOVANT**

Movant, Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including the uniquely American idea that all men are created equal and endowed by their Creator with unalienable rights to life, liberty, and the pursuit of happiness. This case is important to AAF because it presents an opportunity for this court to demonstrate that the FDA does not merit judicial deference under *Chevron v. NRDC*, 467 U.S. 837 (1984) nor under *Auer v. Robbins*, 519 U.S. 452 (1997), two lines of cases that for too long have permitted the confusion of powers of the several branches of the Federal government. The genius of the Constitution is its structure, dividing power against itself into three coequal branches and thereby protecting the liberties of its citizens from usurpers of delegated and limited governmental power.

### **REASONS TO GRANT MOVANT'S AMICUS CURIAE STATUS**

Although no federal or local rule provides for *amicus curiae* briefs here, this Court allows the filing of amicus briefs in appropriate cases. *See e.g., United States v. Texas Educ. Agency*, 138 F.R.D. 503, 508 (N.D. Tex. 1991); *Kinard v. Dish Network Co.*, 228 F. Supp. 3d 771, 777 (N.D. Tex. 2017). Given the absence of applicable rules, movant AAF looks to the appellate rules' criteria for granting leave to file amicus briefs to support its motion here.

The Advisory Committee Note to the 1998 amendments to Rule 29 explains that “[t]he amended rule . . . requires that the motion state the relevance of the matters asserted to the disposition of the case” as “ordinarily the most compelling reason for granting leave to file.” Fed. R. App. P. 29, Advisory Committee Notes, 1998 Amendment. Now-Supreme Court Justice Samuel Alito once wrote “I think that our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (citing Michael E. Tigar and Jane B. Tigar, *Federal Appeals – Jurisdiction and Practice* 181 (3d ed. 1999) and Robert L. Stern, *Appellate Practice in the United States* 306, 307-08 (2d ed. 1989)). With that background, movant AAF respectfully submits that its proffered brief will bring at least two relevant and important matters to the Court’s attention:

1. In October of 2006, the United States House of Representatives Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy, and Human Resources conducted a hearing entitled *RU-486: Demonstrating a Low Standard for Women's Health?* ("Congressional Hearing"), and committee staff issued a subsequent report entitled *The FDA and RU-486: Lowering the Standard for Women's Health* ("Congressional Report"). This congressional report addressed the significant flaws in the FDA's approval of RU-486, or mifepristone, for use in conjunction with misoprostol as a chemical abortifacient. The report details the significant safety concerns that existed at the time of approval and the FDA's abuse of the Subpart H new drug approval process despite those concerns. The undersigned counsel for movant served as Staff Director and Senior Counsel for this Subcommittee.
2. The problems apparent in 2006 at the time of the report remain today, even as the FDA introduces laxity in the safety requirements associated with chemical abortions.

Respectfully submitted, this 10th day of February 2023.

J. Marc Wheat  
General Counsel  
Advancing American Freedom, Inc.  
801 Pennsylvania Avenue, N.W., Suite 930  
Washington, D.C. 20004  
(202) 780-4848  
MWheat@advancingamericanfreedom.com

**CERTIFICATE OF SERVICE**

I certify that this document will be served on all defendants via ECF and via first class United States mail and email to:

General Counsel Samuel R. Bagenstos  
U.S. Department of Health and Human Services  
200 Independence Ave., S.W., Room 713-F  
Washington, D.C. 20201  
[Samuel.Bagenstos@hhs.gov](mailto:Samuel.Bagenstos@hhs.gov)

Isaac Belfer  
U.S. Department of Justice  
Civil Division, Consumer Protection Branch  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530  
[Isaac.c.belfer@usdoj.gov](mailto:Isaac.c.belfer@usdoj.gov)

Erik C. Baptist, Esq.  
440 First Street, N.W. Suite 600  
Washington, D.C. 20001  
[ebaptist@ADFlegal.org](mailto:ebaptist@ADFlegal.org)

This 10th day of February 2023.

ADVANCING AMERICAN FREEDOM

By: /s/J. Marc Wheat  
Darald J. Schaffer